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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on Indiana state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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ED 382 525

Antidote: Civic Responsibility

Indiana Law

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Lesson 1

1. Has Aimee violated any state laws? Have her parents?

Aimee has violated no Indiana law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor.

Aimee and Carrie's parents however, may be in violation of Indiana law. Ind. Code Ann. §31-6-4-3 (Burns Supp. 1993) will designate a child as in need of services if (1) the child's physical or mental condition is seriously impaired or endangered as a result of the inability, refusal or neglect of the parents to supply the child with necessary supervision; (2) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent; (6) the child substantially endangers the child's own health or the health of another. The situations could all be situations applicable to Aimee and Carrie's parents. Before any conclusions are drawn however, the situation will be evaluated to determine how often the children were left alone and for how long. If this behavior was infrequent and brief, the consequences will likely be mild. If however, the children were regularly endangered, the girls may end up removed from their parents's supervision.

2. Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?

No. It is unlawful for a minor, person under 21, to possess an alcoholic beverage, consume it or transport it on a public highway without at least one parent or guardian present. Ind. Code Ann. §7.1-5-7-7 (Burns 1991).

3. Is Maria violating any law when she tells her roommates whom to call to buy marijuana?

In Indiana it is illegal to possess a controlled substance without a valid prescription. Ind. Code Ann. §35-48-4-7 (Burns 1991). Maria, while not directly possessing the controlled substance, assisted her roommates gain possession of it. Consequently, she could be charged and convicted of conspiracy since she agreed with another person to commit a felony by providing her roommates with critical information needed to possess marijuana. Ind. Code Ann. §35-41-5-2 (Burns 1985).

4. Have Adam and Alex broken any laws other than those against drinking and fighting?

Yes. In Indiana a person commits involuntary manslaughter if he kills another person while committing or attempting to commit battery. Ind. Code Ann. §35-42-1-4 (Burns 1985). Battery occurs when one knowingly or intentionally touches another in a rude, insolent or angry manner. Ind. Code Ann.

§35-42-2-1 (Burns 1985). If the twins intentionally began fighting with Joe and purposely caused him to be in front of a car they will be convicted of this charge. Alternatively, they could be charged merely with battery since they did not intend to kill Joe, but his death was a consequence of unforeseen circumstances surrounding the fight.

5. **Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?**

Yes, Jose is violating Indiana law. It is unlawful for a minor, person under 21, to possess an alcoholic beverage, consume it or transport it on a public highway without at least one parent or guardian present. Ind. Code Ann. §7.1-5-7-7 (Burns 1991). Since neither of his parents are present, and there is alcohol in his vehicle, he is violating the transportation section of this law. He may further be charged with unlawful possession if possession is defined broadly enough to include constructive possession since TJ and Carlos have alcohol in the car.

TJ is violating the same law as Jose. He is unlawfully possessing and consuming alcohol.

While Carlos at 22 may legally possess and consume alcohol, he is in violation of Indiana law for knowingly and intentionally encouraging, aiding or inducing a minor to unlawfully possess alcohol. Ind. Code Ann. §7.1-5-7-15 (Burns 1991).

6. **Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?**

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. § 843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Further, Dr. Melrose is violating Indiana Law. It is a violation of Ind. Code Ann. §35-48-4-14 (Burns Supp. 1993) to knowingly, recklessly or intentionally distribute a controlled substance in violation of IC 35-48-3. Thus, to issue a prescription without a valid medical reason is a violation of the law.

7. **Is Danielle violating any law by taking only one or two pills from someone else's prescription?**

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

Danielle is in violation of Indiana law for knowingly possessing a controlled substance without a valid prescription. Ind. Code Ann. §35-48-4-7 (Burns 1991). She is also in violation of the law for attaining the controlled substance by "misrepresentation, fraud, forgery, deception subterfuge, alteration of prescription order, concealment of a material fact or use of a false name or address. Ind. Code Ann. §35-48-4-15 (Burns Supp. 1993).

8. **Is Renee breaking any law even though she is not selling drugs herself?**

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. § 841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. § 844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21 year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug trafficking defendant involving her daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

Renee is in violation of Indiana law for knowingly possessing a controlled substance without a valid prescription. Ind. Code Ann. §35-48-4-7 (Burns 1992). She is also violating controlled substance distribution prohibitions. The exact charge depends on the drug and quantity at issue. See §§35-48-4-1, et seq.

9. Did Jim violate any law other than those regarding controlled substances?

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. § 841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. § 844 prohibits simple possession of a controlled substance.

Jim transmitted the HIV virus to Andre through the shared needle. Indiana has not yet dealt with this issue, although they have dealt with the sale or transfer of semen containing HIV antibodies. Ind. Code Ann. §16-41-14-18 (Burns 1993). Under the Model Penal Code Jim's behavior could constitute simple or aggravated assault or the attempt thereof, or reckless endangerment; under certain extreme situations, it could be construed as murder. See Gene Schultz, AIDS: Public Health and the Criminal Law, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, AIDS: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. Brock v. State, 555 So.2d 285 (Ala. Crim. App. 1989).

Jim and Andre are both in violation of Ind. Code Ann. §35-48-4-8.3 (Burns Supp. 1993) for possessing drug paraphernalia (syringes).

10. Has the bartender or owner of Bulldog's Bar & Grill violated any law?

Yes. "It is unlawful for a person to sell, barter, deliver or give away an alcoholic beverage to another person who is in a state of intoxication if the person knows that the other person is intoxicated." Ind. Code Ann. §7.1-5-10-15(a) (Burns 1991). The person furnishing alcohol is not civilly liable for damages caused by the impairment or intoxication of the person to whom the alcoholic beverage was furnished unless the furnisher had actual knowledge that the person to whom the alcoholic beverage was furnished was intoxicated at the time the alcoholic beverage was furnished and the intoxication of the person to whom the beverage was furnished was a proximate cause of the death, injury or damage alleged. Ind. Code Ann. §7.1-5-10-15.5 (Burns 1991).

Lesson 2

CRIMINAL JUSTICE STATISTICS:
DRUG AND ALCOHOL RELATED OFFENSES
UNIFORM CRIME REPORT DATA OF 1990--CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990
A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

[3] Massachusetts calls their schedules classes, but they are the same thing.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg (Class A Felony)	• imprisonment for 20 to 30 years, and • fine not to exceed $10,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin (Class A Felony)	• imprisonment for 20 to 30 years, and • fine not to exceed $10,000
First Offense: Codeine - Possession - 200 mg (Class D Felony)	• imprisonment for 1 to 4 years, and • fine not to exceed $10,000
Second Offense: Marijuana - Possession - 50 kg (Class C Felony)	• imprisonment for 2 to 4 years, and • fine not to exceed $10,000
Third Offense - Methamphetamine - Possession - 100 g (Class B Felony)	• imprisonment for 6 to 10 years plus 3 to 8 additional years for being a habitual drug offender, and • fine not to exceed $10,000

Cite: IC § 35-48-4-2

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

1. **What does DWI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Under §9-30-5-2 it is unlawful for a person to drive while intoxicated. Under §9-30-5-1 it is unlawful to drive with a blood alcohol concentration of 0.10 or more.

3. **In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?**

Indiana law does distinguish between DUI and DWI.

4. **What are the penalties for being convicted of DWI? DUI?**

Violation of §9-30-5-2 is a class A misdemeanor punishable by up to one year in prison and a fine up to $5000. Violation of §9-30-5-1 is a class C misdemeanor punishable by up to 60 days in prison a fine up to $500. Under §9-30-5-3 if a person has a previous conviction of driving while intoxicated or a previous conviction within 5 years of the present conviction then s/he is guilty of a class D felony, punishable by up to 18 months in prison.

Section 9-30-5-10 additionally states additional penalties as follow:

CONVICTION	PUNISHMENT
First Conviction	♦ license suspended for 90 days to 2 years
Previous Conviction within 5 to 10 years	♦ license suspended 180 days to 2 years
Previous Conviction within 5 years	♦ license suspended 1 to 2 years

* If another person is seriously injured or killed due to an individual's driving while intoxicated, the driver license will be suspended for 2 to 5 years.

5. What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?

Under §9-30-6-1 driving a vehicle on the roads of Indiana implies that one consents to a test of his/her breath to determine blood alcohol concentration. Refusal under §9-30-7-5 is a class C infraction and driving privileges may be suspended for not more than 1 year.

6. **What must a person's blood alcohol content (BAC) be before**

he/she is legally intoxicated?

A person's BAC must be 0.10 to legally intoxicated in Indiana.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. Indiana law does not provide a lower BAC for persons under 21.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

There is no open container law in Indiana. Note however, under §7.1-5-7-7 it is unlawful for a minor to possess, consume, or transport alcoholic beverages.

Lesson 9

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,

- Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

ID: minors <16 can drive during the daytime only
IL: minors <17 cannot drive between 11pm-6am Mon-Thur and

12am-6am Fri-Sun
LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD: minors <16 cannot drive between 12am-5am
MA: minors <18 cannot drive between 1am-4am
NY: minors <18 cannot drive between 9pm-5am
PA: minors <18 cannot drive between 12am-5am
SD: minors <16 cannot drive between 8pm-6am.